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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,448	07/19/2002	Hiroki Sato	2002-0348A	9408

513 7590 04/05/2004  
WENDEROTH, LIND & PONACK, L.L.P.  
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SUITE 800  
WASHINGTON, DC 20006-1021

EXAMINER

FORD, VANESSA L

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

10/089,448

Applicant(s)

SATO ET AL.

Examiner

Vanessa L. Ford

Art Unit

1645

-- The MAILING DATE of this communication appears on the c ver sh et with th correspondence address --

**Period for R ply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disp sition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-12 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Pri rity under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

### **Election/Restrictions**

- |           |   |
|-----------|---|
| Group I   | Claim 1 is drawn to an inoculating agent for production of fruit bodies of an entomopathogenic fungus, containing hyphal bodies of the entomopathogenic fungus. |
| Group II  | Claims 2-3 are drawn a method of producing an inoculating agent.  |
| Group III | Claim 4 are drawn a spawned insect.   |
| Group IV  | Claims 5-12 are drawn to a method of producing fruit bodies.  |

2. The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature of Group I is an inoculating agent for the production of fruit bodies of an entompathogenic fungus, containing hyphal bodies of the entompathogenic fungus. The special technical feature lacks novelty under PCT Article 33(2) as being anticipated by Mizuno (*International Journal of Medicinal Mushrooms*, Vol. 1, pp. 251-261). Mizuno teaches an inoculating agent, cultured hyphae extracted from *Cordyceps sinensis* (page 259). Group I is the main invention in this application and it lacks novelty, therefore the other claims are not so linked by a special technical feature within the meaning of PCT Rule 13.2 so as to form a single inventive concept. Inasmuch as, the technical feature does not define a contribution over the art, it is not "special" within the meaning of PCT Rule 13.2. Consequently, Groups I, II, III and IV lack unity of invention.

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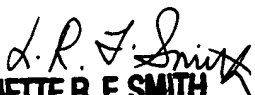
3. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 308-4242.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (703) 308-4735. The examiner can normally be reached on Monday – Friday from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.



Vanessa L. Ford  
Biotechnology Patent Examiner  
March 31, 2004

  
**LYNETTE R. F. SMITH**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**